

No. 10805

United States
Circuit Court of Appeals
For the Ninth Circuit.

HARRY C. CLAIR,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

AUG 2 - 1944

PAUL P. O'BRIEN,
CLERK

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Transcript of Record

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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525 Corbett Building, Portland, Oregon,
Attorneys for Appellee.

In the District Court of the United States
For the District of Oregon

Civil No. 1677

UNITED STATES OF AMERICA,

Petitioner,

vs.

HARRY C. CLAIR, an unmarried man; CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, a corporation; M. F. CAMPBELL; E. C. BUTMAN and JANE DOE BUTMAN, his wife, if married; C. A. HUGHES and JANE DOE HUGHES, his wife, if married; B. H. OLDFIELD and JANE DOE OLDFIELD, his wife, if married; VICTORIA RICHARDS and JOHN DOE RICHARDS, her husband, if married; L. E. OSGOOD and JANE DOE OSGOOD, his wife, if married; ROBERT W. WALLACE and JANE DOE WALLACE, his wife, if married; JOHN WIENERT and JANE DOE WIENERT, his wife, if married; W. R. COOTE and JANE DOE COOTE, his wife, if married; and BENTON COUNTY, a municipal corporation and political subdivision of the State of Oregon,
Defendants.

PETITION FOR CONDEMNATION

Leave of Court having been obtained, your petitioner United States of America, through its attorneys, files this Petition for Condemnation and

respectfully represents to this Honorable Court as follows:

I.

That the defendant Benton County is a municipal corporation and political subdivision of the State of Oregon and is by law vested with the power to sue and be sued in its own name;

II.

That this proceeding is instituted pursuant to and under authority of the following Acts of Congress:

The Act of August 1, 1888 (25 Stat. 357, 40 U.S.C. Sec. 257);

The Act of February 26, 1931 (46 Stat. 1421, 40 U.S.C. Secs. 258a) and Acts supplementary thereto and amendatory thereto;

The Act of August 18, 1890 (26 Stat. 316) as amended by the Acts of July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518, 50 U.S.C. Sec. 171) and March 27, 1942 (Public Law 507—77th Congress);

The Act of April 28, 1942 (Public Law 528—77th Congress);

III.

That pursuant to and under authority of the Acts of Congress above [1*] cited and referred to, the Secretary of War of the United States of America (1) has selected the hereinafter described lands for acquisition by the United States of America for use in connection with the establishment of a military training camp known as Camp Adair, Oregon,

*Page numbering appearing at foot of page of original certified Transcript of Record.

and for such other uses as may be authorized by Congress or by Executive Order; (2) has determined and is of the opinion that it is necessary and advantageous to the interest of the United States to acquire by condemnation under judicial process the estate or interest hereinafter set forth in and to the lands so selected and hereinafter described for the public use and purpose of adequately providing for the establishment of a military training camp and for related military purposes, and that said lands are required for immediate use; and (3) has made application to the Attorney General of the United States to cause this proceeding to be commenced, in pursuance of which application the Attorney General of the United States has authorized this proceeding to be instituted;

IV.

That the estate taken by the petitioner in this proceeding is the full fee simple title in and to the hereinafter described lands, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, for pipe lines and for water and sewage systems;

V.

That the lands condemned by and through this proceeding are located in Benton County, Oregon, within this judicial district, and are more particularly described as follows:

Tract No. B-67

Tract 1: Beginning at Section corner to

Sections 14, 15, 22 and 23, Township 10 South, Range 5 West of the Willamette Meridian, and running thence N. $0^{\circ} 2'$ W. 33.216 chains to the center of the County Road; thence S. $49^{\circ} 54'$ East 6.814 chains to the intersection of the center of the county road with the West line of Francis Writsman D.L.C. #50, thence S. $5^{\circ} 36'$ East 28.92 chains to the South line of Section 14 which is .70 chains N. $5^{\circ} 36'$ W. of the Southwest corner of said claim; thence S. $89^{\circ} 40'$ West 8.021 chains to the place of beginning, in Benton County, Oregon.

Tract 2: Also the South half of Section 15, Township 10 South, Range 5 West of the Willamette Meridian, excepting the following:

Beginning at a $\frac{3}{4}$ " pipe, the quarter section corner between Sections 14 and 15, said township and range, and running thence S. $0^{\circ} 2'$ East 6.523 chains to the center of the County Road; thence [2] N. $49^{\circ} 54'$ W. 10.137 chains along the center of the County Road; thence S. $89^{\circ} 57'$ East 7.75 chains to the place of beginning, in Benton County, Oregon.

Tract 3: Also, the Northwest Quarter of Section 22, also the West half of the Northeast Quarter of said Section 22, also the North half of the Southwest Quarter of said Section 22, also the Northwest Quarter of the Southeast Quarter of said section 22, all lying and being situated in Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Tract 4: All of the Southeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5' West of the Willamette Meridian, in Benton County, Oregon.

Tract 5: Also the Northeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

The above described lands aggregate 777.7 acres, more or less; and that a plan showing the above described lands is marked Schedule "B" attached to the Declaration of Taking on file herein;

VI.

That the public use for which the hereinabove described lands are taken is adequately to provide for the establishment of a military training camp or other war purposes;

VII.

That funds for the acquisition of the hereinabove described lands have been appropriated by the aforesaid Act of Congress approved April 28, 1942 (Public Law 528—77th Congress), and that the Secretary of War of the United States has declared that he is of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor;

VIII.

That the petitioner has caused diligent search to be made among the public records of the State of

Oregon and of Benton County, wherein the above described lands are located, to determine the names of the owners and the names of every other person interested in the lands taken herein or any part thereof, and that all of said persons insofar as can be ascertained from the public records have been made parties to this proceedings;

IX.

That the petitioner has done and performed every act and thing required by law to be done by said petitioner as a condition precedent to the [3] bringing and maintaining of this action;

X.

That this proceeding was originally a part of the cause entitled *United States vs. O. G. Simpson, et al.*, Civil No. 1111, wherein on the 18th day of June, 1942, this Court entered an order granting possession to the United States of America as of said date of the lands hereinabove described along with other lands included in said proceeding; that simultaneously with the filing of the Petition herein there is also filed a Declaration of Taking in which the Secretary of War of the United States has estimated that the sum of \$20,872.90 is just compensation for the taking of the interest hereinabove set forth in and to the hereinabove described lands and that this amount, to-wit: \$20,872.90 is deposited into the Registry of this Court under the provisions of the Declaration of Taking Act approved February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a).

Wherefore, your petitioner prays:

(a) That this Court make an order reciting the filing of the Declaration of Taking and Petition herein and the depositing into the Registry of this Court of the estimated just compensation for the taking herein of the above described lands and the effect thereof as to the vesting of title in the United States of America to said lands, subject to the limitations and exceptions hereinabove set forth, and granting immediate possession of said lands under said Declaration of Taking to the petitioner United States of America; and

(b) That this Honorable Court take jurisdiction of this cause and make and have entered herein all such orders, judgments and decrees as may be necessary to determine the ownership of the above described lands, and to fix the value of the same and the amount of compensation to be paid by petitioner to whoever may be adjudged to be the owner or owners of the above described lands, and to make and have entered all such further orders, judgments and decrees as may be necessary to vest title to the estate or interest hereinabove set out in and to the lands hereinabove described in the United States of America and to make just distribution of

the estimated and final award among those entitled thereto as expeditiously as possible.

BERNARD H. RAMSEY,

Special Assistant to The

Attorney General;

JOHN E. WALKER,

STANLEY R. DARLING,

JAMES LEAVY,

BERT C. BOYLAN, [4]

HARRY D. BOIVIN,

Special Attorneys, Depart-

ment of Justice, 525 Corbett

Building, Portland, Oregon.

JOHN E. WALKER

State of Oregon,

County of Multnomah—ss.

I, John E. Walker, being first duly sworn, depose and say: That I am a duly appointed, qualified and acting Special Attorney of the Department of Justice; that I am possessed of information from which I have prepared the foregoing Petition for Condemnation; that the allegations therein contained are true as I verily believe.

JOHN E. WALKER

Subscribed and sworn to before me this 3 day of December, 1942.

[Seal]

RENEE FRITSCH

Notary Public for Oregon

My Commission Expires: 2/5/45

[Endorsed]: Filed December 3, 1942 [5]

In the United States District Court in and For the
District of Oregon

No. 7

UNITED STATES OF AMERICA,

Petitioner,

vs.

HARRY C. CLAIR and JANE DOE CLAIR, his wife, if married; CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, a corporation; M. F. CAMPBELL, E. C. BUTMAN, and JANE DOE BUTMAN, his wife, if married; C. A. HUGHES and JANE DOE HUGHES, his wife, if married; B. H. OLDFIELD and JANE DOE OLDFIELD, his wife, if married; VICTORIA RICHARDS and JOHN DOE RICHARDS, her husband, if married; L. E. OSGOOD and JANE DOE OSGOOD, his wife, if married; COUNTY OF BENTON, a political subdivision; and 777.7 acres of land, more or less, in Benton County, State of Oregon,

Defendants.

DECLARATION OF TAKING

To the Honorable, The United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat.

1421, 40 U. S. C. sec. 258a), and Acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec. 171) and March 27, 1942 (Public Law 507—77th Congress), which Acts authorize the acquisition of land for military or other war purposes, and the Act of Congress approved April 28, 1942 (Public Law 528—77th Congress), which Act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for a military training camp and other purposes incident thereto. The said lands have been selected by me for acquisition by the United States for use in connection with the [6] establishment of Camp Adair, Oregon and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of part of the same lands described in the petition in the case United States of America, petitioner, vs. O. G. Simpson, et al, and 26,968 acres of land, more or less, in Benton, Linn, and Polk Counties, State of Oregon, Civil No. 1111 from which case the lands described in this Declaration of Taking will have been severed prior to the filing hereof.

3. The estate taken for said public uses is the full fee simple title thereto, subject, however, to existing easements, if any, for public roads and highways, for public utilities, for railroads, for pipe lines, and for water and sewage systems.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said lands, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this Declaration to be signed in its name by said Henry L. Stimson, Secretary of War, this the 19th day of November, A. D. 1942, in the City of Washington, District of Columbia.

HENRY L. STIMSON

Secretary of War of the
United States. [7]

Schedule "A"

The land which is the subject matter of this Declaration of Taking and of this condemnation aggregates 777.7 acres, more or less, situate and

being in the County of Benton, State of Oregon. A description of the lands taken, together with a list of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

Tract No. B-67

Description:

Tract 1. Beginning at Section corner to Sections 14, 15, 22 and 23, Township 10 South, Range 5 West of the Willamette Meridian, and running thence N. $0^{\circ} 2'$ W. 33.216 chains to the center of the County Road; thence S. $49^{\circ} 54'$ East 6.814 chains to the intersection of the center of the county road with the West line of Francis Writsman D.L.C. #50, thence S. $5^{\circ} 36'$ East 28.92 chains to the South line of Section 14 which is .70 chains N. $5^{\circ} 36'$ W. of the Southwest corner of said claim; thence S. $89^{\circ} 40'$ West 8.021 chains to the place of beginning, in Benton County, Oregon.

Tract 2. Also the South half of Section 15, Township 10 South, Range 5 West of the Willamette Meridian, excepting the following: Beginning at a $\frac{3}{4}$ " pipe, the quarter section corner between Sections 14 and 15, said township and range, and running thence S. $0^{\circ} 2'$ East 6.523 chains to the center of the County Road; thence N. $49^{\circ} 54'$ W. 10.137 chains along the center of the County Road; thence S. $89^{\circ} 57'$ East 7.75 chains to the place of beginning, in Benton County, Oregon.

Tract 3. Also, the Northwest Quarter of Section 22, also the West half of the Northeast Quarter

of said Section 22, also the North half of the Southwest Quarter of said Section 22, also the Northwest Quarter of the Southeast Quarter of said Section 22, all lying and being situated in Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Tract 4. All of the Southeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Tract 5. Also the Northeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Name of purported owner: Harry C. Clair.

Address of purported owner: 2157 N. E. 28th Avenue, Portland, Oregon.

Estimated Compensation: \$20,872.90.

The gross sum estimated to be just compensation for the lands hereby taken is \$20,872.90. [8]

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Endorsed
Filed December 3, 1943

In the District Court of the United States
For the District of Oregon

Civil No. 1677

UNITED STATES OF AMERICA,
Petitioner,
vs.

HARRY C. CLAIR, an unmarried man; CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, a corporation; M. F. CAMPBELL; E. C. BUTMAN and JANE DOE BUTMAN, his wife, if married; C. A. HUGHES and JANE DOE HUGHES, his wife, if married; B. H. OLDFIELD and JANE DOE OLDFIELD, his wife, if married; VICTORIA RICHARDS and JOHN DOE RICHARDS, her husband, if married; L. E. OSGOOD and JANE DOE OSGOOD, his wife, if married; ROBERT W. WALLACE and JANE DOE WALLACE, his wife, if married; JOHN WIENERT and JANE DOE WIENERT, his wife, if married; W. R. COOTE and JANE DOE COOTE, his wife, if married; and BENTON COUNTY, a municipal corporation and political subdivision of the State of Oregon,

Defendants.

JUDGMENT ON THE DECLARATION OF
TAKING AND ORDER OF POSSESSION

This matter coming on upon motion of the petitioner United States of America, by and through its attorneys of record, for a judgment on the

declaration of taking and order of possession, and a hearing having been held in open court on said motion, and the Court having considered said declaration of taking and the petition for condemnation heretofore filed herein, Finds: First: That the United States of America is empowered by law to acquire property by condemnation under judicial process for the use and purposes set forth in said declaration of taking and petition for condemnation; Second: That this proceeding was instituted and the petition for condemnation and declaration of taking herein were filed at the request of the Secretary of War of the United States, the authority empowered by law to acquire the lands described in said petition and declaration of taking and at the direction of the Attorney General of the United States, the person authorized by law to direct the institution of such proceedings; Third: That said declaration of taking was filed on December 3, 1942, and simultaneously therewith the sum of \$20,872.90 was deposited in the Registry of this Court in this cause as the estimated just compensation as set forth in said declaration of taking, and that said declaration of taking contained (1) a statement of authority under which and the public use for which the lands described therein were taken; (2) a description of the lands taken [10] sufficient for the identification thereof; (3) a statement of the estate or interest taken in said lands for said public use; (4) a plan showing the lands taken; (5) a statement of the sum of money estimated by the Secretary of War of the United States to be

just compensation for the taking of the lands described therein; and (6) a statement by the said Secretary of War that in his opinion the ultimate award for the taking of said lands will probably be within any limits prescribed by law as the price to be paid therefor; Fourth: That possession of the lands described in said declaration of taking and petition for condemnation on file herein was granted to the United States of America as of June 18, 1942, by order of this Court made and entered on that date in the case of *United States of America v O. G. Simpson, et al.*, Civil No. 1111. Now, Therefore, it is hereby Ordered, Adjudged and Decreed: (1) That the full fee simple title in and to the lands described in the petition for condemnation, and in the declaration of taking on file herein, and which is described as follows:

Tract No. B-67

Tract 1: Beginning at Section corner to Sections 14, 15, 22 and 23, Township 10 South, Range 5 West of the Willamette Meridian, and running thence N. $0^{\circ} 2'$ W. 33.216 chains to the center of the County Road; thence S. $49^{\circ} 54'$ East 6.814 chains to the intersection of the center of the county road with the West Line of Francis Writsman D.L.C. #50, thence S. $5^{\circ} 36'$ East 28.92 chains to the South line of Section 14 which is .70 chains N. $5^{\circ} 36'$ W. of the Southwest corner of said claim; thence S. $89^{\circ} 40'$ West 8.021 chains to the place of beginning, in Benton County, Oregon.

Tract 2: Also the South half of Section 15, Township 10, South, Range 5 West of the Willamette Meridian, excepting the following: Beginning at a 3/4" pipe, the quarter section corner between Sections 14 and 15, said township and range, and running thence S. 0° 2' East 6.523 chains to the center of the County Road; thence N. 49° 54' W. 10.137 chains along the center of the County Road; thence S. 89° 57' East 7.75 chains to the place of beginning, in Benton County, Oregon.

Tract 3: Also, the Northwest Quarter of Section 22, also the West half of the Northeast Quarter of said Section 22, also the North half of the Southwest Quarter of said Section 22, also the Northwest Quarter of the Southeast Quarter of said Section 22, all lying and being situated in Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Tract 4: All of the Southeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Tract 5: Also the Northeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette [11] Meridian in Benton County, Oregon.

The above described lands aggregate 777.7 acres, more or less; became and was vested in the petitioner United States of America as of December 3, 1942, the date of the filing of said declaration of taking herein and the depositing into the Registry

of this Court of the amount of estimated just compensation, free and discharged of all claims and liens of every kind whatsoever, subject, however, to existing easements, if any, for public roads and highways, for public utilities, for railroads, for pipe lines, and for water and sewage systems; (2) That on said date, to-wit: December 3, 1942, the right to receive just compensation for the taking of the interest hereinabove set out in the lands hereinabove described vested in the persons entitled thereto, and that the amount of just compensation to be paid for the taking of said lands shall be ascertained and awarded in this proceeding as established by judgment herein, pursuant to law; and (3) That possession under said declaration of taking of the lands hereinbefore described be delivered forthwith to and taken by petitioner United States of America.

Dated at Portland, Oregon, this 3rd day of December, 1942.

JAMES ALGER FEE

District Judge

[Endorsed]: Filed December 3, 1942. [12]

[Title of District Court and Cause.]

**CONSENT TO ENTRY OF FINAL JUDGMENT
AND PETITION FOR PARTIAL DISTRIBUTION OF FUNDS**

Comes now the defendant Harry C. Clair, an unmarried man, and in this, his consent to entry of

final judgment and petition for partial distribution of funds, respectfully represents to this Court as follows:

I.

That in the above-entitled proceeding the United States of America has taken the full fee simple title, subject to existing easements for public roads and highways, for public utilities, for railroads, for pipe lines, and for water and sewage systems, in and to the following-described lands situate in Benton County, Oregon, to-wit:

Tract No. B-67

Tract 1: Beginning at Section corner to Sections 14, 15, 22 and 23, Township 10 South, Range 5 West of the Willamette Meridian, and running thence N. $0^{\circ} 2'$ W. 33.216 chains to the center of the County Road; thence S. $49^{\circ} 54'$ East 6.814 chains to the intersection of the center of the county road with the West Line of Francis Writsman D.L.C. #50, Thence S. $5^{\circ} 36'$ East 28.92 chains to the South line of Section 14 which is .70 chains N. $5^{\circ} 36'$ W. of the Southwest corner of said claim; thence S. $89^{\circ} 40'$ West 8.021 chains to the place of beginning, in Benton County, Oregon;

Tract 2: Also the South half of Section 15, Township 10 South, Range 5 West of the Willamette Meridian, excepting the following: Beginning at a $3/4''$ pipe, the quarter section corner between Sections 14 and 15, said township and range, and running thence S. $0^{\circ} 2'$ East 6.523 chains to the center of the County Road; thence N. $49^{\circ} 54'$ W. 10.137

chains along the center of the County Road; thence S. 89° 57' East 7.75 chains to the place of beginning, in Benton County, Oregon;

Tract 3: Also, the Northwest quarter of Section 22, also the West half of the Northeast Quarter of said Section 22, also the North half of the Southwest Quarter of said Section 22, also the Northwest Quarter of the Southeast Quarter of said Section 22, all lying and being situated in Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon;

Tract 4: All of the Southeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon; [13]

Tract 5: Also the Northeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon;

The above described lands aggregate 777.7 acres, more or less;

II.

That the defendant Harry C. Clair, an unmarried man, was the true and record owner of the hereinbefore described lands immediately prior to the time that the title to said lands vested in the United States of America, and that the title of said defendant was divested by the filing of the declaration of taking in this cause on December 3, 1942;

III.

That immediately prior to the granting of an or-

der of possession of the lands hereinbefore described to the United States of America by this Court in the cause of United States v. O. G. Simpson, et al., Civil No. 1111, from which this cause was severed, the right of occupancy and possession of said lands was vested solely in the defendant Harry C. Clair and Robert W. Wallace, as tenant of the said Harry C. Clair, and that no person, firm or corporation has been engaged by the petitioning defendant to perform work of any kind upon said lands or furnish materials of any kind to or for said lands for which a lien thereon might have been claimed within the sixty-one days immediately preceding the granting of the aforementioned order of possession on June 18, 1942, or for which a lien might be claimed within the period subsequent to June 18, 1942, and the filing of the declaration of taking on December 3, 1942, herein;

IV.

That no assignment or conveyance of the interest of the petitioning defendant in or to said lands or the right of said defendant to just compensation for the taking thereof has been made, save and except transfer of such title as was effected by the filing of the declaration of taking herein;

V.

That your petitioning defendant has not removed any of the timber that was located upon the lands hereinbefore described subsequent to the cruise of the timber on said lands made in August, 1942, nor has any other person under the direction or author-

ity of said petitioning defendant removed any of the timber upon said lands subsequent to August, 1942; [14]

VI.

That there has been heretofore deposited in the Registry of this Court in this cause for the use and benefit of the persons entitled thereto the sum of \$20,872.90 as estimated just compensation for the taking of the lands hereinbefore described;

VII.

That there are no liens or encumbrances against said lands except taxes due the County of Benton, Oregon, for the current year 1942-43, and that the petitioning defendant is entitled to receive all of said compensation after the payment of said taxes, and the petitioning defendant does hereby agree to accept as full settlement of all claims against the United States of America and as full final and complete award of the reasonable and just compensation for the taking of the hereinbefore described lands the sum of \$20,872.90, and petitioning defendant further represents and alleges that said sum of \$20,872.90 is the full fair market value of the lands so taken; that the petitioning defendant Harry C. Clair does hereby submit himself generally to the jurisdiction of this Court in this cause and does waive the right to the intervention of a jury in the above-entitled proceeding for the purpose of fixing the reasonable and just compensation to be paid to said petitioning defendant for the taking of the hereinabove described lands, and does expressly

agree that just compensation therefor may be fixed by this Court without reference to a jury.

Wherefore, petitioning defendant prays for an order of this Court fixing the full fair market value and the reasonable and just compensation for the taking of the lands aforementioned at the sum of \$20,872.90 as of the date of the filing of the declaration of taking herein, and for an order of this Court directing the Clerk of this Court to pay to the petitioning defendant Harry C. Clair the sum of \$12,000.00 in partial distribution of the aforementioned sum on deposit herein, without charging commission or poundage fee thereon.

HARRY C. CLAIR [15]

State of Oregon,
County of Multnomah—ss.

I, Harry C. Clair, being first duly sworn, on oath depose and say:

That I am one of the defendants in the above-entitled cause; that I have read the foregoing Consent to Entry of Final Judgment and Petition for Partial Distribution of Funds; that I know the contents thereof, and that the same is true as I verily believe.

HARRY C. CLAIR

Subscribed and sworn to before me this 16th day of December, 1942.

(Seal)

BERT C. BOYLAN

Notary Public for Oregon,

My commission expires: May 6, 1945

[Endorsed]: Filed December 23, 1942 [16]

[Title of District Court and Cause.]

ORDER FOR PARTIAL DISTRIBUTION
OF FUNDS

This matter coming on to be heard upon the consent to entry of final judgment and petition for partial distribution of funds of the defendant Harry C. Clair and upon the oral motion of the petitioner United States of America herein for an order of partial distribution, and said defendant Harry C. Clair, by and through his consent to entry of final judgment, having expressly submitted himself to the jurisdiction of this Court, and the petitioner appearing herein through its attorneys of record; And It Appearing to the Court from the allegations contained in the consent of the defendant Harry C. Clair herein and from the records and files herein that the said Harry C. Clair was the owner of the lands sought to be acquired by the United States of America through this proceeding; that at the time of the granting of an order of possession by this Court to the United States of the lands described in the declaration of taking and petition for condemnation in this cause, the right of occupancy and possession of said lands was vested solely in the defendant Harry C. Clair; And It Further Appearing to the Court that the sum of \$20,872.90 is now on deposit in the Registry of this Court in the above-entitled cause as estimated just compensation for the taking of the full fee simple title to the lands described in the petition for condemnation herein, subject to existing easements for public roads and

highways, for public utilities, for railroads, for pipe lines and for water and sewage systems; that the retention of \$8,872.90 of said estimated just compensation will be adequate to meet any claims or liens outstanding against said lands other than the claim of the defendant Harry C. Clair to compensation therefor; and that \$12,000.00 of said estimated compensation may be and should be disbursed to the defendant Harry C. Clair, an unmarried man, Now, Therefore, it is hereby Ordered, Adjudged and Decreed that the [17] Clerk of this Court be and he hereby is directed to forthwith pay over to the said defendant Harry C. Clair, 3560 N.E. Klickitat Street, Portland, Oregon, the sum of \$12,000.00 out of the sum of \$20,872.90 now on deposit in the Registry of this Court in this cause, without charging commission or poundage fees thereon, and that said Clerk take the receipt of said defendant therefor.

Dated at Portland, Oregon, this 23rd day of December, 1942.

CLAUDE McCOLLOCH

District Judge.

[Endorsed]: Filed December 23, 1942. [18]

United States District Court
District of Oregon

Portland, Oregon, December 24, 1942

Received from G. H. Marsh, clerk of the District Court of the United States for the District of Oregon, the sum of Twelve Thousand Dollars, on ac-

count of compensation in cause Civ. 1677, United States vs. Harry C. Clair et al.

HARRY C. CLAIR

[Endorsed]: Filed December 24, 1942. [19]

[Title of District Court and Cause.]

ORDER FIXING VALUE AND DISBURSING
FUNDS AND FINAL JUDGMENT IN
CONDEMNATION

This matter coming on upon the motion of the United States of America, petitioner herein, by and through its attorneys of record, for an order fixing value and disbursing funds and final judgment in condemnation; and the defendant Harry C. Clair, an unmarried man, having appeared herein by and through a consent to entry of final judgment, wherein said defendant prayed for an order of this Court fixing the full fair market value and the reasonable just compensation for the taking of the lands herein condemned in the sum of \$20,872.90; and a disclaimer of interest and consent to entry of judgment heretofore been filed in this cause by the California Pacific Title Insurance Company, a corporation, wherein said defendant waived any claim to any part of the compensation for the taking of said lands; and an order of default having heretofore been entered in this cause as to the defendants M. F. Campbell, Victoria Richards and John Doe Richards, her husband, if married, L. E. Osgood and Jane Doe Osgood, his wife, if married,

W. R. Coote and Jane Doe Coote, whose true name is Theresa M. Coote, husband and wife; and an order of dismissal having been heretofore entered in this cause as to the defendants E. C. [20] Butman and Jane Doe Butman, his wife, if married, C. A. Hughes and Jane Doe Hughes, his wife, if married, B. H. Oldfield and Jane Doe Oldfield, his wife, if married; and a disclaimer of interest and consent to entry of judgment having been heretofore filed in this cause by the defendants Robert W. Wallace and Jane Doe Wallace, whose true name is Amy F. Wallace, husband and wife, wherein said defendants waived any claim to any part of the compensation to be paid for the taking of the lands herein condemned; and a disclaimer of interest and consent to entry of judgment having been heretofore filed in this cause by John Wienert and Jane Doe Wienert, whose true name is Edna E. Wienert, husband and wife, and the defendant Benton County, a municipal corporation and political subdivision of the State of Oregon, having heretofore filed answer in this cause, wherein it is alleged that there are no taxes due said defendant on the real property described in the Petition for Condemnation on file herein; and the Court having heard testimony as to what constitutes reasonable and just compensation to be paid for the taking of the lands described in the Petition for Condemnation and Declaration of Taking on file herein, and hereinafter described, and having considered the evidence presented as to the rights of the various defendants to the reasonable and just compensation therefor, and being

fully advised as to the law and facts herein, Finds: First: That pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. Sec. 257; the Act of February 26, 1931 (46 Stat. 1421, 40 U.S.C. Sec. 258a) and Acts supplementary thereto and amendatory thereof; the Act of August 18, 1890 (26 Stat. 316) as amended by the Acts of July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518, 50 U.S.C. Sec. 171) and March 27, 1942 (Public Law 507 - 77th Congress); the Secretary of War was and is authorized to acquire real estate by condemnation under judicial process in the name of the United States of America; Second: That pursuant to said authority the Secretary of War has selected the hereinafter described lands for acquisition by the United States of America for use in connection with the establishment of a military training camp known as Camp Adair, Oregon, and for related military purposes, and for such other uses as may be authorized by Congress or by Executive Order, and has determined and is of the opinion that the herein- [21] after described lands are necessary adequately to provide for the establishment of a military training camp and for related military purposes, and that said lands are required for immediate use, and that it is necessary and advantageous to the interest of the United States to acquire the hereinafter described lands by condemnation under judicial process, and that by direction of the Attorney General of the United States, pursuant to the request of the Secretary of War, this condemnation proceeding was instituted

pursuant to the aforementioned statutes for the purpose of acquiring the estate or interest hereinafter set forth in and to the lands so selected; Third: That funds for the acquisition of said lands were appropriated by the Act of Congress approved April 28, 1942 (Public Law 528 - 77th Congress), and that there was deposited in the Registry of this Court in this cause the sum of \$20,872.90 as estimated just compensation for the taking of the hereinafter described lands under the the Declaration of Taking filed in this cause on December 3, 1942; Fourth: That pursuant to the filing of the Declaration of Taking aforesaid and the deposit of \$20,872.90 as estimated just compensation in the Registry of this Court and the filing of a Petition for Condemnation, the full fee simple title in and to the lands hereinafter described, subject however to existing easements for public roads and highways, for public utilities, for railroads, for pipe lines and for water and sewage systems, vested in the United States of America, free and discharged of all claims of any kind whatsoever; Fifth: That at the time of the filing of the Declaration of Taking aforesaid the fee simple title to the lands hereinafter described was vested in the defendant Harry C. Clair, an unmarried man, free and clear of all liens and encumbrances; that the defendants California Pacific Title Insurance Company, a corporation, M. F. Campbell, E. C. Butman and Jane Doe Butman, his wife, if married, C. A. Hughes and Jane Doe Hughes, his wife, if married, B. H. Oldfield and

Jane Doe Oldfield, his wife, if married, Victoria Richards and John Doe Richards, her husband, if married, L. E. Osgood and Jane Doe Osgood, his wife, if married, Robert W. Wallace and Jane Doe Wallace, whose true name is Amy F. [22] Wallace, husband and wife, John Wienert and Jane Doe Wienert, whose true name is Edna E. Wienert, husband and wife, W. R. Coote and Jane Doe Coote, whose true name is Theresa M. Coote, husband and wife, and Benton County, a municipal corporation and political subdivision of the State of Oregon, have no right, title or interest in and to the lands herein condemned or the funds on deposit in this cause; Sixth: That at the time of the filing in this Court of the Declaration of Taking aforesaid, the full market value of the lands hereinafter described was \$20,872.90 and that said sum is the reasonable and just compensation to be paid for the taking of said lands by the United States of America, subject to existing easements as hereinafter mentioned; Seventh: That by order of this Court entered in this cause on the 23rd day of December, 1942, the sum of \$12,000.00 was disbursed to the defendant Harry C. Clair in partial distribution of the sum on deposit, and that there now remains on deposit in this cause and subject to disbursement the sum of \$8,872.90; Now, Therefore, it is hereby Ordered, Adjudged and Decreed that the full fee simple title to the following described lands in Benton County, Oregon, to-wit:

Tract No. B-67

Tract 1: Beginning at Section corner to Sections 14, 15, 22 and 23, Township 10 South, Range 5 West of the Willamette Meridian, and running thence N. $0^{\circ} 2'$ W. 33.216 chains to the center of the County Road; thence S. $49^{\circ} 54'$ East 6.814 chains to the intersection of the center of the county road with the West line of Francis Writsman D.L.C. #50, thence S. $5^{\circ} 36'$ East 28.92 chains to the South line of Section 14 which is .70 chains N. $5^{\circ} 36'$ W. of the Southwest corner of said claim; thence S. $89^{\circ} 40'$ West 8.021 chains to the place of beginning, in Benton County, Oregon.

Tract 2: Also the South half of Section 15, Township 10 South Range 5 West of the Willamette Meridian, excepting the following: Beginning at a $3/4''$ pipe, the quarter section corner between Sections 14 and 15, said township and range, and running thence S. $0^{\circ} 2'$ East 6.523 chains to the center of the County Road; thence N. $49^{\circ} 54'$ W. 10.137 chains along the center of the County Road; thence S. $89^{\circ} 57'$ East 7.75 chains to the place of beginning, in Benton County, Oregon.

Tract 3: Also, the Northwest Quarter of Section 22, also the West half of the Northeast Quarter of said Section 22, also the North half of the Southwest Quarter of said Section 22, also the Northwest Quarter of the Southeast Quarter of said Section 22, all lying and being situated in Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon. [23]

Tract 4: All of the Southeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Tract 5: Also the Northeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon, aggregating 777.7 acres, more or less;

vested in the United States of America on December 3, 1942, free and discharged of all liens and claims of any kind whatsoever, subject however to existing easements for public roads and highways, for public utilities, for railroads, for pipe lines and for water and sewage systems; and It Is Further Ordered, Adjudged and Decreed that the sum of \$20,872.90 was as of the date of the filing of the Declaration of taking on, to-wit: December 3, 1942, the fair market value of the lands hereinbefore described, and that said sum is the reasonable and just compensation to be paid by the United States of America for the taking of the full fee simple title to said lands, subject to existing easements as hereinbefore mentioned; and It Is Further Ordered that the Clerk of this Court be and he is hereby authorized and directed forthwith to pay to Harry C. Clair, 3560 N.E. Klickitat Street, Portland, Oregon, the sum of \$8,872.90 as final payment and as full settlement of all claims of said defendant against said lands or the funds on deposit herein,

said payment to be made without charging commission or poundage fees thereon, and the Clerk is directed to take the receipt of said defendant for said payment.

CLAUDE McCOLLOCH

District Judge.

Dated at Portland, Oregon, this 7th day of June, 1943.

[Endorsed]: Filed June 7, 1943. [24]

[Title of District Court and Cause.]

TESTIMONY

Portland, Oregon, Monday, June 7, 1943,
9:50 o'clock A.M.

Before:

Honorable Claude McCulloch,
Judge

Appearance:

Mr. John E. Walker,
Special Attorney, Department of Justice,
appearing for the United States of America, Petitioner.

Alva W. Person,
Court Reporter.

PROCEEDINGS

Mr. Walker: If your Honor please, I have one or two here, rather four. In the cause of the United States of America v. Harry C. Clair, and others,

Civil No. 1677, I wish to file my affidavit regarding the non-military status of W. R. Coote and wife, Theresa M. Coote, and I move for an order of default as to these defendants, for the reason that they failed to answer the petition in condemnation within the time provided by law.

For the information of the record, Mr. Coote was joined as a party defendant because of the existence of a sawmill on the property of Mr. Clair. He does not have any ownership in the land involved. And for the further information of the Court, the title deeds of Mr. Clair, the only remaining defendant in the cause, have heretofore been offered in evidence in connection with an order of partial distribution. With this order of default, the one remaining individual defendant is Harry C. [26] Clair. A petition for an order fixing value in the sum of \$20,872.90 has heretofore been filed in this cause, so at this time I would like to have Mr. Wallace sworn to testify as to value.

W. B. WALLACE

was thereupon produced as a witness in behalf of the United States of America, Petitioner, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Mr. Wallace, by whom are you employed?

A. The Real Estate Branch of the Army Engineers.

Q. In what capacity?

(Testimony of W. B. Wallace.)

A. Chief of Claim and Appraisal Section.

Q. Are you familiar with a tract of land in the Camp Adair project known as Tract B-67 and reputedly owned by Harry C. Clair?

A. Yes, sir, I have.

Q. Have you made an appraisal of that tract of land to determine its value?

A. One was made under my supervision and direction.

Q. What is the general description of the land?

A. Some of the land is pasture, and the larger portion of it is covered by timber. There are some improvements on the property also.

Q. Based on your experience as an appraiser, and your supervision of the work of appraising this land, what in your opinion was the fair, market value of the land, improvements and timber, on December 3, 1942, the date that the Declaration of Taking was filed?

A. Assuming there was no change between the date of the appraisal, which was in April, 1942, and the date of the Declaration of Taking, the value would be \$20,872.90.

Mr. Walker: Any questions, your Honor?

The Court: Do the land owners contest it?

Mr. Walker: No. The land owner has heretofore filed a petition for an order fixing value in that amount.

The Court: Take the order.

(Witness excused.) [27]

Mr. Walker: Based on the evidence and files in this case, I move for an order fixing the value of the land taken in the sum of \$20,872.90, for an order disbursing the remaining funds on deposit in the amount of \$8,872.90, and for a final judgment in condemnation.

The Court: Take the order.

(The foregoing hearing was concluded at 9:52 o'clock A. M.)

[Endorsed]: Filed June 29, 1943. [28]

In the District Court of the United States
for the District of Oregon

Civil No. 1677

UNITED STATES OF AMERICA,

Petitioner,

vs.

HARRY C. CLAIR, et al,

Defendants.

REPORTER'S CERTIFICATE

I, Alva W. Person, do hereby certify that I reported in shorthand all of the oral proceedings had and evidence given upon the hearing in the above entitled cause on Monday, June 7, 1943, before the above entitled Court, the Honorable Claude McCulloch, Judge, presiding; that I subsequently re-

duced my shorthand notes to typewriting, and the foregoing and hereto attached four pages of typewritten matter, numbered 1 to 4, both inclusive, constitute a full, true and accurate record of said oral proceedings had and evidence given upon said hearing.

Dated at Portland, Oregon, this 23rd day of June, 1943.

ALVA W. PERSON

Court Reporter

[Endorsed]: Filed June 29, 1943. [29]

United States District Court
District of Oregon

\$8,872.90

Portland, Oregon, June 9, 1943

Received from G. H. Marsh, clerk of the District Court of the United States for the District of Oregon, the sum of Eight Thousand Eight Hundred Seventy-two and 90/100 Dollars, on account of compensation in full Cause No. Civ. 1677, United States vs. Harry C. Clair et al.

HARRY C. CLAIR

[Endorsed]: Filed June 9, 1943. [30]

[Title of District Court and Cause.]

MOTION FOR ORDER VACATING ORDER
FIXING VALUE AND DISBURSING
FUNDS AND FINAL JUDGMENT IN
CONDEMNATION

Comes now plaintiff, United States of America, by and through its attorneys of record, and moves the above entitled Court for an Order vacating the Order fixing value and disbursing funds and final judgment in condemnation heretofore entered by this Court in this cause on the 7th day of June, 1943, upon the ground and for the reason that plaintiff believes it expedient to introduce further testimony in this cause relating to the fair market value of the property, including the merchantable timber thereon, taken in this proceeding.

HARRY D. BOIVIN

Special Attorney

Department of Justice

[Endorsed]: Filed September 3, 1943. [31]

[Title of District Court and Cause.]

ORDER VACATING ORDER FIXING VALUE
AND DISBURSING FUNDS AND FINAL
JUDGMENT IN CONDEMNATION

This matter coming on for hearing upon Motion of the plaintiff, United States of America, by and through its attorneys of record, for an Order vacating the Order fixing value and disbursing funds and final judgment in condemnation, and It Appearing to the Court that plaintiff believes it expedient to introduce further testimony in this cause relating to the fair market value of the property, including merchantable timber thereon, taken in this proceeding; Now, Therefore, it is hereby Ordered that the Order fixing value and disbursing funds and final judgment in condemnation heretofore entered by this Court in this cause on the 7th day of June, 1943, be and the same is hereby set aside and vacated; and It Is Further Ordered that a copy of this Order be served by mail on all of the above named defendants in this cause.

Dated at Portland, Oregon, this 3rd day of September, 1943.

CLAUDE McCOLLOCH
District Judge

[Endorsed]: Filed September 3, 1943. [32]

[Title of District Court and Cause.]

VERDICT OF THE JURY

We, the Jury sworn and impaneled to determine the just compensation to be paid by the United States for the taking of the lands involved in this proceeding, do hereby find that the full fair market value of the lands taken herein as of the 18th day of June, 1942 is the sum of Fifteen Thousand One Hundred Dollars (\$15,100.00).

Dated at Portland, Oregon, this 8th day of December, 1943.

DORA FLOOD

Foreman

[Endorsed]: Filed December 8, 1943. [35]

In the District Court of the United States
for the District of Oregon

Civil No. 1677

UNITED STATES OF AMERICA,

Petitioner,

vs.

HARRY C. CLAIR, an unmarried man; CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, a corporation; M. F. CAMPBELL; E. C. BUTMAN and JANE DOE BUTMAN, his wife, if married; C. A. HUGHES and JANE DOE HUGHES, his wife, if married;

B. H. OLDFIELD and JANE DOE OLDFIELD, his wife, if married; VICTORIA RICHARDS and JOHN DOE RICHARDS, her husband, if married; L. E. OSGOOD and JANE DOE OSGOOD, his wife, if married; ROBERT W. WALLACE and JANE DOE WALLACE, his wife, if married; JOHN WIENERT and JANE DOE WIENERT, his wife, if married; W. R. COOTE and JANE DOE COOTE, his wife, if married; and BENTON COUNTY, a municipal corporation and political subdivision of the State of Oregon,
Defendants

JUDGMENT ON VERDICT

This cause coming on regularly for trial, petitioner appearing by and through C. U. Landrum, Special Assistant United States Attorney and the defendant, Harry C. Clair, an unmarried man, appearing by and through A. K. McMahan and Mark V. Weatherford, his attorneys, and the defendant, Benton County, Oregon appearing not, a jury was thereupon duly empaneled and sworn to try the issues in said cause and by stipulation of the parties, and upon the Order of the Court the jury viewed the real property involved in this proceeding and after hearing the testimony of *of* witnesses for the petitioner and for the defendant, argument of counsel and the instructions of the Court, did retire for deliberation and after deliberating did, on the 8th day of December, 1943, return into this Court a verdict in words and figures as follows, to-wit:

[Title of District Court and Cause.]

VERDICT OF THE JURY [36]

We, the Jury sworn and impaneled to determine the just compensation to be paid by the United States for the taking of the lands involved in this proceeding, do hereby find that the full fair market value of the lands taken herein as of the 18th day of June, 1942 is the sum of Fifteen Thousand One Hundred Dollars (\$15,100.00).

Dated at Portland, Oregon, this 8th day of December, 1943.

/s/ DORA FLOOD

Foreman

Now, Therefore, by verdict of the law and by reason of the premises in said Verdict it is Ordered and Adjudged that the full fair market value of the hereinafter described real property sought to be acquired by the United States of America by and through this proceeding be and the same is hereby fixed in the sum of \$15,100.00 as of the 18th day of June, 1942, which said sum has heretofore been deposited in the Registry of this Court for the use and benefit of the persons entitled thereto; and it is Further Ordered and Adjudged that the full simple title to the following described lands situate in Benton County, Oregon, to-wit:

Tract No. B-67:

Tract 1: Beginning at Section corner to Sections 14, 15, 22 and 23, Township 10 South, Range 5 West of the Willamette Meridian, and running thence N.

0° 2' W. 33.216 chains to the center of the County Road; thence S. 49° 54' East 6.814 chains to the intersection of the center of the county road with the West line of Francis Writsman D.L.C. #50, thence S. 5° 36' East [37] 28.92 chains to the South line of Section 14 which is .70 chains N. 5° 36' W. of the Southwest corner of said claim; thence S. 89° 40' West 8.021 chains to the place of beginning, in Benton County, Oregon;

Tract 2: Also the South half of Section 15, Township 10 South, Range 5 West of the Willamette Meridian, excepting the following: Beginning at a 3/4" pipe, the quarter section corner between Sections 14 and 15, said township and range, and running thence S. 0° 2' East 6.523 chains to the center of the County Road; thence N. 49° 54' W. 10.137 chains along the center of the County Road; thence S. 89° 57' East 7.75 chains to the place of beginning, in Benton County, Oregon;

Tract 3: Also, the Northwest Quarter of Section 22, also the West half of the Northeast Quarter of said Section 22, also the North half of the Southwest Quarter of said Section 22, also the Northwest Quarter of the Southeast Quarter of said Section 22, all lying and being situated in Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon;

Tract 4: All of the Southeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon;

Tract 5: Also the Northeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon;

vested in the United States of America free and discharged of all claims of every kind whatsoever, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, for pipe lines, and for water and sewage systems, on December 3, 1942, the date of the filing in this cause of the Declaration of Taking covering said lands.

JAMES ALGER FEE

District Judge

Dated at Portland, Oregon, this 8th day of December, 1943.

[Endorsed]: Filed December 18, 1943. [38]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice is hereby given that the Defendant above named, Harry C. Clair, an unmarried man, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the judgment on verdict entered in this action on December 8, 1943.

Signed: HAMPSON, KOERNER, YOUNG
& SWETT

JAMES C. DEZENDORF

Attorneys for Appellant

Harry C. Clair, an unmarried
man.

Address: 800 Pacific Building,
Portland 4, Oregon.

[Endorsed]: Filed March 6, 1944. [39]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Presents, That we Harry C. Clair, an unmarried man, as principal, and American Employers' Insurance Company, a Massachusetts corporation, as surety, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said United States of America, its successors and assigns; to which payment well and truly to be made we bind ourselves, our

successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 6th day of March, 1944.

Whereas, on December 8, 1943, in an action depending in the United States District Court for the District of Oregon between the United States of America, as Petitioner, and Harry C. Clair, an unmarried man, and others, Defendants, a judgment on verdict was entered and the said Harry C. Clair having filed a notice of appeal from such judgment on verdict to the United States Circuit Court of Appeals for the Ninth Circuit;

Now, the condition of this obligation is such that if the said Harry C. Clair, an unmarried man, shall prosecute his appeal to effect and shall pay costs if the appeal is dismissed or the judgment on verdict affirmed, or such costs as the said Circuit Court of Appeals may award against the said Harry C. Clair, an unmarried man, if the order or judgment is modified, or, in any other event, then

this obligation to be void; otherwise to remain [40]
in full force and effect.

Principal:

HARRY C. CLAIR

By JAMES C. DEZENDORF

One of his attorneys

Surety:

AMERICAN EMPLOYERS'

INSURANCE COMPANY,

a Massachusetts Corporation

By C. HUNT LEWIS, JR.

Attorney in Fact

By D. M. DIAMOND

Attorney in Fact

(Seal)

Countersigned:

Lewis & Cartwright, Inc.

By D. M. Diamond, Secty.

Resident Agent

[Endorsed]: Filed March 6, 1944. [41]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk, United States District Court for the District of Oregon, do *hereby that* the foregoing pages numbered from 1 to 51 inclusive, constitute the transcript of record on appeal from a judgment of said court therein numbered Civil 1677, in which the United States of America is

plaintiff and appellee, and Harry C. Clair is defendant, and appellant; that the said transcript has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof, and that it is a full, true and correct transcript of the record and proceedings had in said court and cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

I further certify that the cost of comparing and certifying the within transcript is \$11.95 and that the same has been paid by the appellant.

I further certify that I have enclosed under separate cover a duplicate transcript of the testimony taken in this cause.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 15th day of June, 1944.

(Seal) LOWELL MUNDORFF,
Clerk.

By F. L. BUCK
Chief Deputy

[Endorsed]: No. 10805. United States Circuit Court of Appeals for the Ninth Circuit. Harry C. Clair, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 19, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10805

HARRY C. CLAIR, an unmarried man, et al,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

**STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL AND DESIGNATION OF RECORD
TO BE PRINTED**

Appellant will raise the following points on this appeal:

(1) Since the judgment heretofore entered hereon on June 7, 1943, was a consent judgment entered

pursuant to an agreement between the parties, it cannot subsequently be opened up or set aside without the consent of both parties, no showing of fraud, mutual mistake or absence of consent having been made or existing in fact.

(2) The court, on September 3, 1943, was without power to vacate or set aside the judgment entered June 7, 1943, because (a) the term during which the judgment was entered had expired, and (b) if the application to vacate and set aside the judgment entered June 7, 1943, be considered as a separate proceeding, Appellant was not afforded an opportunity to be heard and no sufficient ground was urged or existed to warrant the entry of an order vacating or setting aside the judgment of June 7, 1943.

Appellant hereby designates for printing the following portions of the certified transcript on appeal:

- (1) Petition or complaint,
- (2) Declaration of Taking,
- (3) Judgment on the declaration of taking and order of possession,
- (4) Consent to entry of final judgment and petition for partial distribution of funds,
- (5) Order for partial distribution of funds,
- (6) Receipt of Harry C. Clair for \$12,000.00,
- (7) Order fixing value and disbursing funds and final judgment in condemnation,
- (8) Transcript of testimony given at June 7, 1943, hearing,
- (9) Receipt of Harry C. Clair for \$8,872.90,

(10) Motion for order vacating order fixing value and disbursing funds and final judgment in condemnation,

(11) Order vacating order fixing value and disbursing funds and final judgment in condemnation,

(12) Verdict of the jury,

(13) Judgment on verdict,

(14) Notice of appeal,

(15) Bond for Costs on Appeal.

HAMPSON, KOERNER,

YOUNG & SWETT

JAMES C. DEZENDORF

Attorneys for Appellant

Harry C. Clair,

800 Pacific Building,

Portland 4, Oregon.

State of Oregon

County of Multnomah—ss.

Service of the foregoing Statement of Points on which Appellant Intends to Rely on Appeal and Designation of Record to Be Printed by copy, as prescribed by law, is hereby admitted at Portland, Oregon, this 26th day of June, 1944.

STANLEY R. DARLING

Of Attorneys for Appellee

By BERT C. BOYLAN

No. 10805

United States
Circuit Court of Appeals
For the Ninth Circuit.

HARRY C. CLAIR,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

1000

1000

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

HAMPSON, KOERNER, YOUNG & SWETT, and
JAMES C. DEZENDORF,

Pacific Building,
Portland, Oregon,

Attorneys for Appellant.

BERNARD H. RAMSEY,

Special Assistant to Attorney General,

JOHN E. WALKER,
STANLEY R. DARLING,
JAMES LEAVY,
BERT C. BOYLAN and
HARRY D. BOIVIN,

Special Attorneys, Department of Justice,
525 Corbett Building,
Portland, Oregon,

Attorneys for Appellee.

In the District Court of the United States
for the District of Oregon

Civil No. 1677

UNITED STATES OF AMERICA,
Petitioner,
vs.

HARRY C. CLAIR, an unmarried man, et al,
Defendants.

SHOWING IN OPPOSITION TO MOTION
FOR ENTRY OF FINAL JUDGMENT IN
CONDEMNATION

Comes now the Defendant, Harry C. Clair, and in opposition to the Government's motion for the entry of final judgment in condemnation respectfully shows:

(1) That there has already been entered herein, on the 8th day of December, 1943, a judgment on verdict and the term during which said judgment on verdict was entered has expired, and

(2) That Plaintiff now concedes that there was no fraud in connection with the entry of the original order fixing value and disbursing funds and final judgment in codemnation entered herein on June 7, 1943, as is evidenced by the statement of Norman M. Littell, Assistant Attorney General in charge of the Lands Division, which is attached hereto, marked Exhibit "A", and made a part hereof.

This showing is based upon the record and files

herein and the affidavit of James C. Dezendorf, which is attached hereto.

JAMES C. DEZENDORF,
Of Attorneys for Defendant.
HARRY C. CLAIR,
800 Pacific Building,
Portland 4, Oregon.

[Endorsed]: Filed June 6, 1944. [1*]

[Title of District Court and Cause.]

AFFIDAVIT OF JAMES C. DEZENDORF

State of Oregon

County of Multnomah—ss.

I, James C. Dezendorf, being first duly sworn, depose and say:

That on March 19, 1944, there appeared in the Sunday Oregonian and Sunday Journal stories, copies of which are attached as Exhibits 1 and 2 respectively. On Monday morning, March 20, 1944, I inquired at the Oregon Journal upon what the story appearing in the Sunday paper (which is Exhibit 2) was based, and I was handed a statement by Norman M. Littell (which is attached hereto as Exhibit "A") and was informed that it was delivered to the Oregon Journal by the United States Attorney's office in Portland, Oregon, for release in the Sunday papers of March 19, 1944.

JAMES C. DEZENDORF

*Page numbering appearing at foot of page of original certified Transcript of Record.

Subscribed and sworn to before me this 6th day of June, 1944.

[Seal]

DOROTHY THAIN,

Notary Public for Oregon.

My commission expires Dec. 20, 1944. [2]

EXHIBIT A

Statement By Norman M. Littell, Assistant Attorney General in Charge of the Lands Division, Regarding the Camp Adair Cases, Camp Adair, Oregon

In August and September 1943, questions were raised as to the valuation of timber lands embraced in condemnation proceedings to acquire approximately 47,000 acres of land on which Camp Adair is located. I immediately requested a complete investigation by the F.B.I., relying on their usual policy of "hewing to the line and letting the chips fall where they may." It is only fair to all concerned to state that the results of that investigation by the F.B.I. are now in, and that there is no evidence of fraud, collusion or conspiracy to defraud the Government.

However, in addition to requesting an F.B.I. investigation, I also caused a new timber cruise to be made by Henry Thomas of Portland, Oregon, because the agreed settlement of certain cases which representatives of this department had made upon instructions of the War Department, had been based upon timber cruises in which the estimate of merchantable timber were said to be excessive. The original cruises were made by the firm of Mason and

Bruce. The new cruises showed a marked reduction in the amount of merchantable timber. While it is entirely possible for experts to have differences of opinion as to such estimates, and as to values, particularly when the subject matter involves as many complications and uncertain factors as does the valuation of timber lands in the area in which Camp Adair is located, it nevertheless seems quite evident that every possible stick of timber, standing or down, was included in the original cruise as a basis for claims against the Government. Under the circumstances and in view of the discrepancies in these cruises, I have had no choice but to order that all cases be tried.

Quite apart of the F.B.I. investigation and the new timber cruises, I also dispatched to Portland one of the leading condemnation lawyers of the Department of Justice with instructions to look thoroughly into the entire matter, and to try the cases so that disputed values could be determined by juries. Seven cases were tried between November 29 and December 17, 1943, on the basis of the new cruises; values have been reduced in six of those cases.

It is only fair to all concerned to say that Mr. C. U. Landrum also reported no evidence of fraud or conspiracy in the conduct of the individuals connected with these transactions.

NORMAN M. LITTELL

Assistant Attorney General [3]

EXHIBIT No. 1

8 Sunday Oregonian, March 19, 1944
 3 Inquiries Refute Claim
 Of Camp Adair Site Fraud

Three separate investigative efforts have brought to light "no evidence of fraud, collusion or conspiracy to defraud the government" in connection with the valuation of timberlands condemned for establishment of Camp Adair, according to a statement issued Saturday by Norman M. Littell, assistant attorney-general in charge of the department of justice lands division.

The report of the Washington, D. C., official concurs with earlier findings of the United States attorney's office here at the conclusion of an investigation made by that agency, after questions of valuation were raised, leading to a re-hearing of the condemnation cases in federal court.

FBI Found Nothing

Littell's statement related that he requested a FBI investigation which unearthed no evidence of fraud, and also caused a new timber cruise to be made, in addition to assigning C. U. Landrum, described as "one of the leading condemnation lawyers of the department of justice" to look thoroughly into the entire matter and to try the cases so that disputed values could be determined by juries.

Seven cases were tried between November 29 and December 17, 1943, on the basis of new cruises, resulting in values being reduced in six of the cases,

Littell declared. Attorney Landrum also reported no evidence of fraud or conspiracy, he added.

Re-cruise Cuts Total

The re-cruise, ordered by Littell, was made by Henry Thomas of Portland and showed a marked reduction in the amount of merchantable timber from the original cruises, made by the firm of Mason & Bruce, Littell said.

Agreeing that it is possible for experts to hold differing opinions on such estimates in situations like the Camp Adair land where many uncertain factors and complications are involved, the assistant attorney-general added that "it seems quite evident that every possible stick of timber, standing or down, was included in the original cruise as a basis for claims against the government." [4]

EXHIBIT No. 2

Oregon Journal Sunday, March 19, 1944 A5

Adair Timber Deals on Level

The last word on the Camp Adair timber cases Saturday was pronounced by Norman M. Littell, assistant attorney general in charge of the lands division, in his statement that as a result of investigation by the FBI, a new timber cruise, and a series of trials held here before Federal Judge Fee in December, "There is no evidence of fraud or conspiracy in the conduct of the individuals connected with these transactions."

The controversy centered around seven tracts of partly cut-over timberland in the Soap Creek area of Camp Adair, for which the government, acting

after a cruise by the Portland timber engineering firm of Mason & Bruce, paid \$68,485.

Rumors that the government paid too much for the land led to Federal Judge McColloch's ordering an investigation by Harry D. Boivin, then a lands division attorney here, and to a cruise of the land by Henry Thomas. On indications from these investigations, the two judges set aside the previous judgments and ordered the condemnation cases tried, with the result that the government finally paid \$55,500 for the lands.

The cases were tried by C. U. Landrum, a condemnation attorney from the department of justice.

In his statement that the entire proceeding was on the "up and up," Littell points out that "It is entirely possible for experts to have differences of opinion as to such estimates, and as to values, particularly when the subject matter involves as many complications and uncertain factors as does the valuation of timberlands in the Camp Adair area."

[5]

In the District Court of the United States
for the District of Oregon

Civil No. 1677

UNITED STATES OF AMERICA,

Petitioner,

vs.

HARRY C. CLAIR, an unmarried man; CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, a corporation; M. F. CAMPBELL; E. C. BUTMAN and JANE DOE BUTMAN, his wife, if married; C. A. HUGHES and JANE DOE HUGHES, his wife, if married; B. H. OLDFIELD and JANE DOE OLDFIELD, his wife, if married; VICTORIA RICHARDS and JOHN DOE RICHARDS, her husband, if married; L. E. OSGOOD and JANE DOE OSGOOD, his wife, wife, if married; ROBERT W. WALLACE and JANE DOE WALLACE, his wife, if married; JOHN WIENERT and JANE DOE WIENERT, his wife, if married; W. R. COOTE and JANE DOE COOTE, his wife, if married; and BENTON COUNTY, a municipal corporation and political subdivision of the State of Oregon,

Defendants.

FINAL JUDGMENT IN CONDEMNATION

This matter coming on upon the motion of the United States of America, by and through its attor-

neys of record, for a final judgment in condemnation; And It Appearing to the Satisfaction of the Court (1) that this proceeding was instituted in accordance with and under the following Acts of Congress: the Act of August 1, 1888 (25 Stat. 357, 40 U.S.C. Sec. 257); the Act of February 26, 1931 (46 Stat. 1421, 40 U.S.C. Sec. 258a) and Acts supplementary thereto and amendatory thereof; and the Act of August 18, 1890 (26 Stat. 316) as amended by the Acts of July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518, 50 U.S.C. Sec. 171) and March 27, 1942 (Public Law 507—77th Congress); (2) that the Secretary of War of the United States has selected the hereinafter described land for acquisition by the United States for use in connection with the establishment of Camp Adair, Oregon, and for such other uses as may be authorized by Congress or by Executive Order, and has determined and is of the opinion that the [6] hereinafter describe land is necessary adequately to provide for the establishment of a military training camp and for related military purposes, and that it is necessary and advantageous to the interest of the United States to acquire the hereinafter described land by condemnation under judicial process, and that by direction of the Attorney General of the United States, pursuant to the request of the Secretary of War, this condemnation proceeding was instituted pursuant to the aforementioned statutes for the purpose of acquiring the estate or interest hereinafter set forth in and to the land so selected; (3) that funds for the acquisition of said land were ap-

propriated by the Act of Congress of April 28, 1942 (Public Law 528—77th Congress); that there was deposited in the Registry of this Court the sum of \$20,872.90 as estimated just compensation for the taking of said land under declaration of taking filed December 3, 1942; (4) that the defendant, Benton County, a municipal corporation and political subdivision of the State of Oregon, has heretofore filed answer in this cause wherein it is alleged that there are no taxes due said defendant; that a disclaimer of interest and consent to entry of judgment has heretofore been filed in this cause by the defendant, California Pacific Title Insurance Company, a corporation; that an order of default has heretofore been entered in this cause as to the defendants, M. F. Campbell, Victoria Richards and John Doe Richards, her husband, if married, L. E. Osgood and Jane Doe Osgood, his wife, if married, W. R. Coote and Jane Doe Coote, whose true name is Theresa M. Coote, husband and wife; that an order of dismissal has heretofore been entered in this cause as to the defendants, E. C. Butman and Jane Doe Butman, his wife, if married, C. A. Hughes and Jane Doe Hughes, his wife, if married, B. H. Oldfield and Jane Doe Oldfield, his wife, if married; that a disclaimer of interest and consent to entry of judgment has heretofore been filed in this cause by the defendants, Robert W. Wallace and Jane Doe Wallace, whose true name is Amy F. Wallace, husband and wife, John Wienert and Jane Doe Wienert, whose [7] true name is Edna E. Wienert, husband and wife; (5) that at the time of the filing of the

aforementioned declaration of taking, the defendant, Harry C. Clair, an unmarried man, was the owner in fee simple of the land hereinafter described; (6) that by an order of this Court entered in this cause on the 7th day of June, 1943, the fair market value of the land hereinafter described was fixed in the sum of \$20,872.90 as of the 3rd day of December, 1942; (7) that by an order of this Court entered in this cause on the 3rd day of September, 1943, the order of June 7, 1943, was set aside and vacated pending the submission of further testimony relative to the fair market value of the property, including merchantable timber thereon, and thereafter this cause was set down for trial; (8) that heretofore and on the 8th day of December, 1943, the jury impaneled to try the issue of compensation in this case returned a verdict wherein said jury found the full fair market value of the land hereinafter described to be the sum of \$15,100.00 as of the 18th day of June, 1942; (9) that heretofore and on the 23rd day of December, 1942, there was disbursed from the Registry of this Court in this cause the sum of \$12,000.00 to the defendant, Harry C. Clair, and that by order of this Court entered in this cause on the 7th day of June, 1943, there was disbursed to the defendant, Harry C. Clair, the sum of \$8,872.90; Now, Therefore, it is by the Court at this time Ordered, Adjudged and Decreed that the full fee simple title to the following described land in Benton County, Oregon, to-wit:

Tract No. B-67:

Tract 1. Beginning at Section corner to Sections 14, 15, 22 and 23, Township 10 South, Range 5 West of the Willamette Meridian, and running thence N. $0^{\circ} 2' W.$ 33.216 chains to the center of the County Road; thence S. $49^{\circ} 54'$ East 6.814 chains to the intersection of the center of the county road with the West line of Francis Writsman D.L.C. #50, thence S. $5^{\circ} 36'$ East 28.92 chains to the South line of Section 14 which is .70 chains N. $5^{\circ} 36' W.$ of the Southwest corner of said claim; thence S. $89^{\circ} 40'$ West 8.021 chains to the place of beginning, in Benton County, Oregon.

Tract 2. Also the South half of Section 15, Township 10 South, Range 5 West of the Willamette Meridian, excepting the following: Beginning at a $\frac{3}{4}$ " pipe, the quarter section corner between Sections 14 and 15, said township and range, and running thence [8] S. $0^{\circ} 2'$ East 6.523 chains to the center of the County Road; thence N. $49^{\circ} 54'$ W. 10.137 chains along the center of the County Road; thence S. $89^{\circ} 57'$ East 7.75 chains to the place of beginning, in Benton County, Oregon.

Tract 3. Also, the Northwest Quarter of Section 22, also the West half of the Northeast Quarter of said Section 22, also the North half of the Southwest Quarter of said Section 22, also the Northwest Quarter of the Southeast Quarter of said Section 22, all lying and being situated in Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Tract 4. All of the Southeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

Tract 5. Also the Northeast Quarter of the Northeast Quarter of Section 21, Township 10 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon.

The above described lands aggregate 777.7 acres, more or less; vested in the United States of America on December 3, 1942, free and clear of all liens, encumbrances, taxes, assessments, or charges of any kind whatsoever, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, for pipe lines, and for water and sewage systems; and it is Further Ordered, Adjudged and Decreed that the full fair market value of the land hereinbefore described as of the 18th day of June, 1942, was the sum of \$15,100.00, and that said sum of \$15,100.00, together with the sum of \$415.25, representative of interest at the rate of 6% per annum on the sum of \$15,100.00 from the 18th day of June, 1942, to the 3rd day of December, 1942, or the aggregate sum of \$15,515.25, is the full amount of compensation to be paid by the United States of America for the taking of said land; and it is Further Ordered, Adjudged and Decreed that the United States of America have and it is hereby given judgment against said defendant, Harry C. Clair, in the sum of \$5,357.65 with interest at the rate of 6% per annum from December 8, 1943 until said judgment shall be paid.

JAMES ALGER FEE,

District Judge.

Dated at Portland, Oregon, this 12 day of June, 1944.

[Endorsed]: Filed June 14, 1944. [9]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the Defendant above named, Harry C. Clair, an unmarried man, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Final Judgment in Condemnation entered in this action on June 12, 1944.

HAMPSON, KOERNER, YOUNG
& SWETT,

Signed: JAMES C. DEZENDORF,

Attorneys for Appellant Harry
C. Clair, an unmarried man.

Address: 800 Pacific Building,
Portland 4, Oregon.

[Endorsed]: Filed June 26, 1944. [10]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Known All Men By These Presents, that we Harry C. Clair, an unmarried man, as principal, and American Employers' Insurance Company, a Massachusetts Corporation, as surety, are held and firmly bound unto United States of America in the full and just sum of two Hundred Fifty (\$250.00) Dollars, to be paid to the said United States of America, its successors and assigns; to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 24th day of June, 1944.

Whereas, on June 12, 1944, in an action depending in the United States District Court for the District of Oregon between the United States of America, as Petitioner, and Harry C. Clair, an unmarried man, and others, Defendants, a Final Judgment in Condemnation was entered and the said Harry C. Clair having filed a notice of appeal from such Final Judgment in Condemnation to the United States Circuit Court of Appeals for the Ninth Circuit;

Now, the condition of this obligation is such that if the said Harry C. Clair, an unmarried man, shall prosecute his appeal to effect and shall pay costs if the appeal is dismissed or the Final Judgment in Condemnation affirmed, or such costs as the said Circuit Court of Appeals may award against the said Harry C. Clair, [11] an unmarried man, if the Final Judgment in Condemnation is modified, or,

in any other event, then this obligation is to be void; otherwise to remain in full force and effect.

Principal:

JAMES C. DEZENDORF

One of his attorneys

Surety:

AMERICAN EMPLOYERS'
INSURANCE COMPANY,

a Massachusetts Corporation

By C. HUNT LEWIS, Jr.

Attorney in Fact

By D. M. DIAMOND

Attorney in Fact

[Seal]

Countersigned:

LEWIS & CARTWRIGHT, INC.

By D. M. DIAMOND

Resident Agent

[Endorsed]: Filed June 26, 1944. [12]

[Title of District Court and Cause.]

STIPULATION

Subject to the approval of the Court, it is hereby Stipulated and Agreed:

First: That the printed record on appeal, in connection with the first and second appeals herein, may be included under one cover.

Second: That Appellant and Appellee may file only one brief, including the questions raised on both the first and second appeals herein.

Third: That the transcript on appeal in the District Court, in connection with the second appeal herein, shall include only the Showing in Opposition to Motion for Entry of Final Judgment in Condemnation, Final Judgment in Condemnation, the second Notice of Appeal, the second Bond for Costs on Appeal and a duplicate original of this stipulation. [13]

Fourth: That all questions raised in both appeals may be presented at one argument.

Fifth: That Appellant may have to and including July 22, 1944, within which to file his opening brief herein.

HAMPSON, KOERNER, YOUNG
& SWETT

JAMES C. DEZENDORF

Attorneys for Appellant Harry
C. Clair, 800 Pacific Building,
Portland 4, Oregon.

STANLEY R. DARLING

Of Attorneys for Appelle, 525
Corbett Building, Portland 4,
Oregon.

[Endorsed]: Filed June 26, 1944. [14]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON THE APPEAL (Second Appeal)

I.

If the Circuit Court of Appeals decides, upon the original appeal herein from the Judgment on Verdict, that said order is not an appealable order, then on this appeal Appellant will contend:

(1) That since the judgment heretofore entered hereon on June 7, 1943, was a consent judgment entered pursuant to an agreement between the parties, it cannot subsequently be opened up or set aside without the consent of both parties, no showing of fraud, mutual mistake or absence of consent having been made or existing in fact,

(2) That the court, on September 3, 1943, was without power to vacate or set aside the judgment entered June 7, 1943, because: (a) the term during which the judgment was entered had expired, and (b) if the application to vacate and set aside the judgment entered June 7, 1943, be considered as a separate proceeding, Appellant was not afforded an opportunity to be heard and no sufficient ground was urged or existed to warrant the entry of an order vacating or setting aside the judgment of June 7, 1943.

II.

The court erred in entering the Final Judgment in Condemnation herein on June 12, 1944, because (1) this cause was then pending on appeal from the judgment on verdict, (2) the term during which

the Judgment on Verdict was entered had expired, and (3) no showing of fraud, accident or mistake was made in connection with the entry [15] of the Judgment on Verdict and the Final Judgment in Condemnation was, in effect, a new judgment amending or setting aside the Judgment on Verdict previously entered.

HAMPSON, KOERNER, YOUNG
& SWETT

JAMES C. DEZENDORG

Attorneys for Appellant Harry
C. Clair, 800 Pacific Building,
Portland 4, Oregon.

[Endorsed]: Filed June 26, 1944 [16]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD (Second Appeal)

Comes now Harry C. Clair, Appellant herein, pursuant to Rule 75, Federal Rules of Civil Procedure, and designates the following portions of the record, proceedings and evidence to be contained in the record on appeal of the above cause:

- (1) Showing in Opposition to Motion for Entry of Final Judgment in Condemnation,
- (2) Final Judgment in Condemnation,
- (3) Notice of Appeal filed June 26, 1944,
- (4) Bond for Costs on Appeal filed June 26, 1944,

(5) Duplicate original of Stipulation filed June 26, 1944,

(6) Statement of Points upon Which Appellant Intends to Rely on the Appeal, and

(7) Designation of Contents of Record on appeal.

HAMPSON, KOERNER, YOUNG
& SWETT

JAMES C. DEZENDORF

Attorneys for Appellant Harry
C. Clair, 800 Pacific Building,
Portland 4, Oregon.

[Endorsed]: Filed June 26, 1944. [17]

United States of America,
District of Oregon.—ss.

CERTIFICATE OF CLERK

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 18 inclusive constitute the transcript on appeal from a judgment of said court in a cause therein numbered Civil 1677, in which the United States of America is plaintiff and appellee, and Harry C. Clair is defendant and appellant; that the said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant and in accordance with the rules of this court; that I have compared the foregoing transcript with the original record

thereof and that the same is a full, true and correct transcript of the record and proceedings had in said court and in said cause, in accordance with the designation as the same appears of record and on file in my office and in my custody.

I further certify that the cost of comparing and certifying the within transcript is \$2.60 and that the same has been paid by the said appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said court in Portland, in said District, this 27th day of June, 1944.

[Seal] LOWELL MUNDORFF,
Clerk.

By F. L. BUCK
Chief Deputy. [18]

[Endorsed]: No. 10805. United States Circuit Court of Appeals for the Ninth Circuit. Harry C. Clair, Appellant, vs. United States of America, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 29, 1944

PAUL P. O'BRIEN
Clerk of the United States
Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10805

HARRY C. CLAIR, an unmarried man, et al,
Appellant,
vs.

UNITED STATES OF AMERICA,
Appellee.
ORDER

Upon application of Appellant and the Court being fully advised, it is hereby Ordered that the parties herein be and they are:

First: Permitted to include, under one cover, the printed record on appeal in connection with the first and second appeals herein,

Second: Permitted to file only one brief, including a discussion of all questions raised on the two appeals herein,

Third: Permitted to omit from the transcript on appeal in the District Court all pleadings, motions and orders already included in the transcript of record on appeal heretofore filed herein, in connection with the first appeal herein, but including the Showing in Opposition to Motion for Entry of Final Judgment in Condemnation, the Final Judgment in Condemnation, the second Notice of Appeal, the second Bond for Costs on Appeal and a duplicate original of the stipulation entered herewith,

Fourth: Permitted to present orally the questions raised in the two appeals at one argument, and

It Is Further Ordered that Appellant be and he hereby is granted to and including July 22, 1944, to file his opening brief herein.

CURTIS D. WILBUR

Circuit Judge

[Endorsed]: Filed June 23, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND DESIGNATION OF RECORD TO BE PRINTED. (Second Appeal)

Appellant hereby adopts as its points on appeal the statement of points appearing in the certified transcript of the record.

Appellant hereby designates for printing the entire certified transcript on appeal.

HAMPSON, KOERNER, YOUNG
& SWETT

JAMES C. DEZENDORF

Attorneys for Appellant, 800
Pacific Building, Portland,
Oregon.

Due service of the above Statement of Points is hereby accepted in Portland, Oregon, this 3rd day of July, 1944.

STANLEY R. DARLING

[Endorsed]: Filed Jul 5 1944. Paul P. O'Brien, Clerk.